

## PUBLIC ACCESS TO SCHOOL RECORDS

### General Rules

Generally, the Access to Public Records Act (“APRA”) (*I.C. 5-14-3*) provides that all records maintained by a public agency are public records, but some records may be confidential or disclosable at the discretion of the public agency. All records which do not fall into the statutory exceptions must be made available for public inspection and copying. *See I.C. § 5-14-3-3.*

The APRA is a general statute; any specific statutes regarding access to specific records supersede the APRA.

An agency cannot declare records confidential absent statutory authority or rulemaking authority specifically allowing the agency to classify records confidential. *See I.C. § 5-14-3-4(a)(2).*

### The Federal Education Rights and Privacy Act of 1974 (“FERPA”)

Under the APRA, public records declared confidential by state or federal law may not be disclosed unless access to the records is specifically required by a state or federal statute or order of a court under the rules of discovery. *See I.C. § 5-14-3-4(a)(1) and (3).*

The Indiana Court of Appeals has held that FERPA (*20 U.S.C. § 1232g; 34 C.F.R. § 99*) requires education records to be kept confidential under the APRA. *An Unincorporated Operating Div. of Indiana Newspapers, Inc. v. The Trs. of Indiana Univ.*, 787 N.E.2d 893, 904 (Ind. Ct. App. 2003).

The Indiana General Assembly has enacted a state statute analogous to FERPA; it can be found at *I.C. § 20-33-7-1 et seq.*

Generally, a school cannot release any information from a student’s education record without written permission from a parent or from a student who is at least eighteen years old or who is beyond high school. *See 20 U.S.C. § 1232g.* A school can release education records without consent to certain people under certain conditions (e.g. other school employees who have “legitimate educational interests”). *See 34 C.F.R. § 99.31.*

The term “education records” has a broad definition. Education records are materials that are directly related to a current or former student and are maintained by an educational agency or institution (or by a party acting on behalf of the agency or institution). *34 C.F.R. § 99.3 construed in (Opinion of the Public Access Counselor 06-FC-191).*

“Education records” includes materials in addition to those related to academic performance. *United States v. Miami*, 294 F.3d 797, 812 (6th Cir. 2002) (holding that student disciplinary records are education records that are protected under FERPA) *cited in Opinion of the Public Access Counselor 05-FC-202.*

The Office of the Public Access Counselor has concluded that the definition of an education record extends to several different types of materials. *See, e.g., (Opinion of the Public Access Counselor 06-FC-191)* (surveillance videotape with images of students at a high school); *05-FC-202* (names of student members of a university's campus appeals board).

Pursuant to the provisions of *20 U.S.C. § 1232g(a)(5)*, a school may disclose "directory information," which includes data which generally does not intrude upon a student's privacy when released. Directory information includes name, addresses, dates of attendance, grade level, and weight and height of members of athletic teams, among others. Under FERPA, each school corporation should adopt its own definition of directory information. *34 C.F.R. § 99.3*. Please check with your local school for its directory information definition.

A parent or a student who is eighteen years old or is beyond high school must have an opportunity to review the student's education records, except for some limited circumstances described under *34 C.F.R. § 99.12*. *See 34 C.F.R. § 99.10*.

For more information about FERPA, visit the U.S. Department of Education website: <http://www.ed.gov/policy/gen/guid/fpco/index.html>.

## **Personnel records**

The APRA provides that an agency generally has the discretion to withhold from disclosure personnel files of public employees or applicants for public employment. *See I.C. § 5-14-3-4(b)(8)*.

Under this provision, a school may withhold from disclosure applications for positions within the school corporation, like those for superintendent, teacher, and other staff positions. The APRA provides, however, that certain personnel file information must be disclosed upon request:

The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

Information relating to the status of any formal charges against the employee; and

The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged. *I.C. § 5-14-3-4(b)(8)(A) to (C)*.

The personnel files provision does not require an agency to create or maintain specific records but provides that any information contained in records the agency maintains which is listed in *I.C. § 5-14-3-4(b)(8)(A) to (C)* must be disclosed upon request. (*Opinion of the Public Access Counselor 08-FC-184*).